

# FOREST EMERGENCY RECOVERY AND RESEARCH ACT

## SECTION BY SECTION ANALYSIS

**Section 1: Short Title:** “Forest Emergency Recovery and Research Act”

**Section 2: Findings**

**Section 3: Definitions (key definitions only)**

**(2) Catastrophic Event:** Regardless of cause, any fire, flood, explosion or natural disaster (including a hurricane, tornado, windstorm, snow or ice storm, rain storm, high water, wind-driven water, tidal wave, earthquake, volcanic eruption, landslide, mudslide, drought, or insect and disease outbreak) that has or will cause significant damage to federal or non-federal land.

**(3) Catastrophic Event Recovery:** The emergency stabilization, rehabilitation, restoration and reforestation that is undertaken in response to a catastrophic event. Reforestation is limited to native or beneficial plants (consistent with the land management plan) to avoid the creation of plantation forests.

**(4) Catastrophic Event Recovery Evaluation:** The evaluation conducted in accordance with Section 102.

**(5) Catastrophic Event Recovery Proposal:** The list and brief description of a catastrophic event recovery projects or research projects and pre-approved management practices that are recommended to rehabilitate the land.

**(6) Catastrophic Event Recovery Project:** The activities identified in the catastrophic event recovery proposal that will be implemented to promote recovery of the affected land.

**(7) Catastrophic Event Research Project:** The scientifically designed study of the effects and effectiveness of catastrophic event recovery and emergency stabilization treatments for an area affected by a catastrophic event.

**(10) Federal Land:** National Forest or Bureau of Land Management Land. Wilderness areas are not included.

**(16) Pre-approved Management Practice:** A management practice under Section 104(a) that may be immediately implemented as part of a catastrophic event recovery or research project to facilitate recovery of the affected land. Such pre-approved management practices would be created through a rule making process for certain forest types or geographic areas where extensive research has been conducted resulting in generally agreed upon best management practices.

**(18) Special Recovery Project:** For non-federal land, the activities proposed to promote recovery of the affected area.

## **TITLE I—RESPONSE TO CATASTROPHIC EVENTS ON PUBLIC LANDS**

### **Section 101: Development of Research Protocols and use in Catastrophic Event Research Projects**

Directs the Secretary to develop research protocols (rule making) through improved knowledge and research (which may be done independently or in conjunction with a catastrophic event recovery project) on catastrophic event recovery and emergency stabilization. The objective of the protocols is to increase the long-term benefits of management activities and decrease short-term impacts of the catastrophic event. The protocols would undergo peer review, must be reported to Congress 180 days after enactment and must be made available to the public. The Secretary must also enter into cooperative agreements with land-grant universities for research.

### **Section 102: Catastrophic Event Recovery Evaluations**

Catastrophic events over 1,000 acres *require* a catastrophic event recovery evaluation (referred to as the “evaluation”). Catastrophic events of more than 250 acres but less than 1,000 acres *may* (but are not required) be evaluated.

The evaluation must be completed in 30 days from the conclusion of the event and include a description of the event and recovery needs, a determination of research projects or protocols that best fit the event, a proposal containing the recovery and/or research project, map of the affected area, a preliminary funding estimate, a preliminary estimate of the receipts, and a preliminary schedule showing the timing of the project.

The Secretary must then determine if pre-approved management practices can be implemented (Section 104) or if the use of alternative arrangements (Section 105) is needed. In making the determination the Secretary must consider (but is not limited to) the need for prompt response, the recovery needs and opportunities, the threat to public health and safety and the likelihood of substantial loss to adjacent private or federal property or other economic loss. The Secretary has sole discretion for the determination, but is required to notify and may consult with the Council on Environmental Quality.

The Secretary is required to use an interdisciplinary approach ensuring the use of both natural and social sciences, may coordinate with other landscape assessments for adjacent non-federal land in need of recovery and must collaborate with State and local governments, Indian Tribes, land-grant universities, and interested persons in the development of the evaluation and proposal.

The Secretary is required to provide public notice of each evaluation (including the recovery proposal) and must also provide notice of public meetings in a manner determined by the Secretary (such as publication in the Federal Register).

### **Section 103: Compliance with the National Environmental Policy Act (NEPA)**

Except as provided by alternative arrangements (Section 105) and pre-approved management practices (in which a post catastrophic event evaluation must be done) (Section 104) all projects must comply with NEPA. For alternative arrangements, Section 105 would satisfy NEPA (this includes the evaluation, project proposal, notice, and appeals).

### **Section 104: Availability and Use of Pre-Approved Management Practices**

The Secretary is directed to prepare a list of management practices that may be immediately implemented (after a post catastrophic evaluation) as part of a recovery or research project to rehabilitate the affected land. The list must be peer reviewed and developed using standard notice and comment rule making. The Secretary may amend or revise the list as necessary.

The Secretary may use the pre-approved management practices for up to two years after the evaluation has been completed. The authority may not be used after the two year time frame.

Permanent road building is prohibited; only temporary roads may be constructed and must be removed upon completion of the project. Timber harvesting is limited to trees that are down, dead, broken, or severely root sprung, where mortality is highly probable within five years of the event and where removal is necessary for worker or public safety.

For compliance with consultation under the Endangered Species Act, the Secretary may use emergency procedures as provided under ESA regulations. Consultation required under other laws (such as the National Historic Preservation Act or the Federal Water Pollution Control Act) may proceed simultaneously with the implementation of the pre-approved management practice. Results of the consultation must be immediately incorporated into the project. No laws are exempted.

A decision document must be issued not more than 30 days after the completion of the evaluation and must be immediately implemented. The decision document shall include: a description of the pre-approved management practice to be implemented, the rationale for the agency decision, an economic analysis and justification, and an analysis of the environmental effects of the management practice and how the effects will be minimized or mitigated consistent with the land management plan. The Secretary may establish interested-party monitoring.

### **Section 105 Availability and Use of Alternative Arrangements**

If the Secretary utilizes alternative arrangements to conduct a recovery or research project, the Secretary is not required to study or develop more than the proposed agency action and the alternative of no action under NEPA. Alternative arrangements may not

be used to construct permanent roads and timber harvesting is limited to down/dead/severely root sprung trees etc. (as described earlier in Section 104). ESA consultation and other consultations are the same as described in Section 104.

A decision document must be issued and immediately implemented no later than 90 days after the evaluation has been completed. The decision document must contain: a rationale for the agency decision, an economic analysis and justification, and a statement of the significant environmental impacts of the action and how such impacts will be minimized or mitigated consistent with the land management plan. The Secretary may establish interested-party monitoring.

### **Section 106 Administrative and Judicial Review**

Except as provided for in Section 106 (b), nothing in this title affects the Administrative Reform Act (notice, comments and appeals) or any legal action under the law.

A person may seek administrative review through the pre-decisional appeals process under the Healthy Forests Restoration Act (HFRA) on pre-approved management projects (Section 104) and catastrophic event recovery or research projects (Section 105).

A person may seek judicial review under HFRA authorities (only after administrative review has been exhausted). Any attorney's fees awarded to prevailing parties under the Equal Access to Justice Act may not exceed the hourly rates of a venue's public defenders.

### **Section 107 Guidance Regarding Reforestation in Response to Catastrophic Events**

The Secretary is required to standardize the collection and reporting of reforestation needs in response to catastrophic events through guidance (guidance must be consistent with agency goals and budget).

### **Section 108 Effect of Title**

Nothing in Title I affects the Secretary's use of other statutory or administrative authorities (including those under NEPA) to conduct a catastrophic event recovery project or catastrophic event research project, that is not conducted under alternative arrangements (Section 105). The Federal Advisory Committee Act shall not apply for the peer/independent review (Section 101 (b)), the monitoring process (Section 104(h) or 105 (f)) and the preparation of a catastrophic event recovery or research evaluation.

## **TITLE II—RESTORING LANDSCAPES AND COMMUNITIES IMPACTED BY CATASTROPHIC EVENTS**

### **Subtitle A—Cooperative Forestry Assistance Act of 1978**

## **Section 201 Assistance Under Cooperative Forestry Assistance Act of 1978 to Restore Landscapes and Communities Affected by Catastrophic Events**

Amends the Cooperative Forestry Assistance Act of 1978 by authorizing the Secretary to cooperate with an eligible entity at their request (State Forester, Indian Tribe, local government, community based organization or person) on a landscape assessment on non-federal land (affected by a catastrophic event) or for a community wildfire protection plan. The Secretary may provide both technical and financial cost-share assistance as well as assistance for special recovery projects (revegetation, tree planting, product development from fire timber harvest, local workforce training and repair of public facilities).

### **Subtitle B—Department of the Interior Assistance**

#### **Section 211 Restoring Landscapes**

Authorizes the Secretary of the Interior to cooperate with an eligible entity at their request (State Forester, Indian Tribe, local government, community based organization or person) on a landscape assessment for an area affected by a catastrophic event. The Secretary may provide both technical and financial cost-share assistance as well as assistance for special recovery projects (revegetation, tree planting, product development from fire timber harvest, local workforce training and repair of public facilities).

The Secretary may cooperate with an eligible entity to assist in the preparation of a community wildfire protection plan and may provide technical and financial cost-share assistance as well as assistance for special recovery projects.

### **TITLE III—EXPERIMENTAL FORESTS**

#### **Section 301 Findings**

#### **Section 302 Availability and Use of Pre-Approved Management Practices on National Forest Experimental Forests**

Authorizes the use of pre-approved management practices on experimental forests.

#### **Section 303 Availability and Use of Alternative Arrangements for Projects on National Forest Experimental Forests**

Authorizes the use of alternative arrangements (Section 105) in experimental forests.

### **TITLE IV—GENERAL PROVISIONS**

#### **Section 401 Regulations**

The Secretary is not required to promulgate regulations to implement this Act.

## **Section 402 Funding Sources**

The Secretary concerned is authorized to use unobligated balances (appropriated within their department) to implement post catastrophic event research and projects. Wildland fires management funds could be used for pre-approved management practices and catastrophic event recovery/research projects related to wildland fire. The Knutson-Vandenberg Fund (from green timber sales), the Forest Service Salvage Fund (from salvage sales), and the BLM's Revolving Fund Derived from Disposal of Salvage Timber (salvage sales) are amended to allow the agencies the flexibility to use those funds for pre-approved management practices and post catastrophic event recovery and research projects. Additionally, FEMA may reimburse the Secretary concerned for any assistance provided to non-federal land designated as a federal disaster area.